



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120709225-2365-01]

RIN 0648-BC32

Temporary Rule to Establish Management Measures for the Limited Harvest and Possession of South Atlantic Red Snapper in 2012

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action.

SUMMARY: NMFS issues this final temporary rule to establish management measures to allow for the limited harvest and possession of red snapper in or from the South Atlantic exclusive economic zone (EEZ) in 2012, as requested by the South Atlantic Fishery Management Council (Council). This rule also announces the opening and closing dates of the 2012 commercial and recreational fishing seasons for red snapper. The intended effect of this temporary rule is to preserve a significant economic opportunity in the South Atlantic snapper-grouper fishery that otherwise might be foregone. Furthermore, limited commercial and recreational harvest of red snapper in 2012 will provide an opportunity to collect fishery-dependent data that

could be useful for the 2014 red snapper stock assessment.

DATES: This temporary rule is effective [insert date of publication in the FEDERAL REGISTER] through December 31, 2012.

The recreational red snapper season opens at 12:01 a.m., local time, on September 14, 2012, and closes at 12:01 a.m., local time, on September 17, 2012; then reopens at 12:01 a.m., local time, on September 21, 2012, and closes at 12:01 a.m., local time, on September 24, 2012. The commercial red snapper season opens at 12:01 a.m., local time, on September 17, 2012, and closes at 12:01 a.m., local time, on September 24, 2012.

ADDRESSES: Electronic copies of the documents in support of this temporary rule, which include an environmental assessment, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>.

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, Southeast Regional Office, NMFS, telephone: 727-824-5305, e-mail: rick.devictor@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage South Atlantic snapper-grouper including red snapper under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and

Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act provides the legal authority for the promulgation of emergency regulations under section 305(c) (16 U.S.C. 1855(c)).

Background

Red snapper are overfished and undergoing overfishing. The harvest and possession of red snapper has been prohibited since January 4, 2010, initially through temporary rules (74 FR 63673, December 4, 2009 and 75 FR 27658, May 18, 2010), and then through the final rule to implement Amendment 17A to the FMP (75 FR 76874, December 9, 2010). Amendment 17A continued the prohibition on a permanent basis by implementing an annual catch limit (ACL) for red snapper of zero (landings only). Amendment 17A also implemented a rebuilding plan for red snapper, which specifies that red snapper biomass must increase to the target rebuilt level in 35 years, starting from 2010. The final rule implementing Amendment 17A also included a large area closure for most snapper-grouper species, however, this area closure did not become effective because it was determined not to be necessary to end the overfishing of red snapper (76 FR 23728, April 28, 2011). At its June 2012 meeting, the Council received new information regarding discard estimates for red snapper. Using this data, the Council and NMFS determined that a limited season for red snapper would be possible in 2012. Therefore,

the Council voted, and NMFS is implementing, emergency rulemaking to allow for the limited harvest and possession of red snapper in or from the South Atlantic EEZ in 2012.

Status of the Stock

The most recent Southeast Data, Assessment, and Review (SEDAR) benchmark stock assessment for red snapper, SEDAR 24, was completed in October 2010. Much like the stock assessment completed in 2008, this assessment showed red snapper to be overfished and undergoing overfishing, but also showed that red snapper were undergoing overfishing at a lower rate than found in the 2008 stock assessment. The next benchmark stock assessment for red snapper was scheduled for 2013. However, this assessment has been delayed until 2014 in order to gather more data.

Need for This Temporary Rule

The Southeast Fisheries Science Center (SEFSC) has new discard data collected since the last benchmark assessment. The new data includes 2010 and 2011 discard estimates from commercial logbooks, the Marine Recreational Fisheries Statistical Survey (MRFSS) and the Southeast Headboat Survey. These data were used to evaluate red snapper discards in relation to the acceptable biological catch (ABC) adopted by the Council (using SEDAR 24 rebuilding projections) to determine if

a limited harvest of red snapper can be allowed for snapper-grouper fishermen in 2012. Using the average of 2010 and 2011 estimated discard mortalities and the 2012 ABC, NMFS has determined that the estimated discard mortality level for 2012 is below the 2012 ABC. Therefore, a limited harvest and possession of red snapper is possible in 2012 while staying within the rebuilding plan. Based on the new discard estimates reviewed at its June 2012 meeting, the Council requested that NMFS promulgate emergency regulations to allow for the limited harvest and possession of red snapper in 2012. The Council voted to implement commercial and recreational management measures to ensure that only a limited amount of red snapper would be harvested and possessed and that this allowance would not prevent the stock from rebuilding to target levels within the specified timeframe.

NMFS' Policy Guidelines for the Use of Emergency Rules (62 FR 44421, August 21, 1997) list three criteria for determining whether an emergency exists and this temporary rule is promulgated under these criteria. Specifically, NMFS' policy guidelines require that an emergency:

- (1) Result from recent, unforeseen events or recently discovered circumstances; and
- (2) Present serious conservation or management problems in

the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

The Council requested dead discard estimates from the SEFSC for 2010 and 2011, in anticipation of holding discussions during the June 2012 Council meeting to consider a limited reopening of red snapper. In a letter dated April 7, 2012, the Council asked for red snapper discard mortality estimates to compare to the previously projected mortality levels from the latest stock assessment. The discard estimates provided by the SEFSC from commercial logbooks, MRFSS, and the Southeast Headboat Survey constitute recently discovered circumstances. The ABC adopted by the Council from SEDAR 24 for 2012 is 86,000 fish. Red snapper harvest can only be allowed if projected mortalities from the harvest and release of fish are less than the ABC for that year. Using the average of 2010 and 2011 estimated mortalities and the 2012 ABC, NMFS estimates there will be 72,933 red snapper killed in 2012. Since the ABC for 2012 is 86,000 fish, the ABC is higher than the estimated discard mortalities for 2012. As a result, the Council and NMFS

determined 13,067 red snapper may be harvested in or from the South Atlantic in 2012.

Input from the public and from a number of fishing communities indicates the harvest prohibition for red snapper has caused socio-economic harm to individuals and associated communities. Unnecessarily prolonging the harvest prohibition presents serious conservation and management problems in the snapper-grouper fishery. Therefore, implementing a limited commercial and recreational season will likely increase socio-economic benefits for South Atlantic snapper-grouper fishermen. Increased fishing opportunities should provide direct benefits to fishermen in the form of additional income and recreational opportunities, in addition to indirect benefits to businesses that provide supplies for fishing trips. NMFS expects the 2012 fishing season revenues to commercial vessels will increase by about \$86,000 (in total; 694 snapper-grouper permitted vessels may potentially participate in this harvest) and that benefits to the recreational anglers will increase by about \$232,000 to \$724,000 (in total; assuming that each of the 9,399 recreational fish is harvested by an individual angler). It is also likely that revenues and profits to for-hire vessels and support businesses will increase, but their magnitude cannot be estimated with the current information. Implementing the

limited harvest of red snapper should also improve compliance and conservation as fishermen view management as being responsive to their needs and support this and other regulations. Additionally, a new stock assessment for red snapper has been delayed in order to gather more data. A limited commercial and recreational season for red snapper in 2012 will provide an opportunity to collect fishery-dependent data, including age composition and catch-per-unit-effort data that could be useful for and enhance the 2014 red snapper stock assessment.

The immediate benefits of implementing a limited commercial and recreational fishing season for red snapper in 2012 provide good cause to waive advance notice and public comment. A limited red snapper season should be implemented as soon as possible in 2012 so as not to open the season too late in the fishing year when poor weather can lead to unsafe fishing conditions. Comments on this action at the June 2012 Council meeting indicated that many fishermen favored a fall season. The U.S. Coast Guard advised that a red snapper opening in late 2012 could lead to unnecessary accidents from unsafe fishing conditions. The Council took all of this information into consideration when they requested a temporary rule for emergency action.

Measures Contained in This Temporary Rule

This temporary rule implements several management measures to authorize the limited harvest and possession of red snapper in or from the South Atlantic EEZ in the 2012 fishing year. The commercial annual catch limit (ACL) is set at 20,181 lb (9,443 kg), gutted weight, which is equal to the commercial quota, and the recreational ACL is set at 9,399 fish. These ACLs are based on the total ACL selected by the Council (13,097 fish), and the current allocation ratio for red snapper (28.07 percent commercial and 71.93 percent recreational). Accountability measures (AMs) are implemented to prevent these ACLs from being exceeded. NMFS and the Council are establishing several management measures that act as AMs, in order to constrain red snapper harvest to these ACLs. Limited commercial and recreational red snapper seasons are established for 2012. The recreational season will open for two consecutive weekends made up of Fridays, Saturdays, and Sundays and the commercial season will be open for 7 days, starting on the Monday following the first recreational weekend opening. The recreational season opens at 12:01 a.m., local time, on September 14, 2012, and closes at 12:01 a.m., local time, on September 17, 2012; then reopens at 12:01 a.m., local time, on September 21, 2012, and closes at 12:01 a.m., local time, on September 24, 2012. The

commercial season opens at 12:01 a.m., local time, on September 17, 2012, and closes at 12:01 a.m., local time, on September 24, 2012. The SEFSC will monitor commercial landings in-season to determine whether the commercial ACL has been harvested. If the commercial ACL has not been harvested during the 7-day season, the Council has given the RA the authority to reopen the commercial sector for another limited time period. If severe weather conditions exist, the Council has given the RA the authority to modify these opening and closing dates. The RA will determine when severe weather conditions exist, the duration of the severe weather conditions, and which geographic areas are deemed affected by severe weather conditions. If severe weather conditions exist or if the SEFSC determines the commercial ACL was not harvested and a reopening of the commercial sector is possible, the RA will file a notification to that effect with the Office of the Federal Register, and announce via NOAA Weather Radio and in a Fishery Bulletin any change in or reopening of the red snapper fishing seasons. During these limited seasons, the recreational sector is allowed a 1-fish per person daily bag limit and the commercial sector a 50-lb (22.7-kg) daily trip limit. The 1-fish recreational bag limit is included in the 10-fish aggregate snapper bag limit. No size limits are implemented for either sector, to decrease

regulatory discards (fish returned to the water because they are below the minimum size limit).

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Assistant Administrator for Fisheries, NOAA (AA), has determined that this temporary rule is necessary to preserve a significant economic opportunity for South Atlantic snapper-grouper fishermen that otherwise would be foregone and is consistent with the Magnuson-Stevens Act and other applicable laws.

This temporary rule has been determined to be not significant for purposes of Executive Order 12866.

The AA finds good cause under 5 U.S.C. 553(b) (B) to waive prior notice and the opportunity for public comment because they are contrary to the public interest. This temporary rule preserves a significant economic opportunity for South Atlantic snapper-grouper fishermen that would otherwise be forgone. Limited harvest and possession of red snapper in 2012 will likely result in revenue increases to commercial vessels and benefit increases to recreational anglers, in addition to providing opportunity to for-hire vessels in booking more trips that could increase their revenues and profits. At the June 2012 Council meeting, South Atlantic snapper-grouper fishermen

discussed the merits of opening red snapper in the South Atlantic for a limited time in 2012. Fishermen will be able to keep the red snapper that they are currently required to discard. Commercial fishermen should be able to increase their incomes in 2012 by about \$86,000 (in total) by being able to sell a highly marketable fish for a limited time. Additionally, limited red snapper seasons will provide an opportunity to collect fishery-dependent data that will likely be useful for the 2014 red snapper stock assessment. Currently, the lack of available red snapper data hinders the ability to assess the status of the stock. Delaying the implementation of this rulemaking to provide prior notice and the opportunity for public comment would reduce the likelihood of opening the red snapper component of the snapper-grouper fishery in the early fall months when weather conditions are more favorable and fishing conditions are safer.

For these same reasons, the AA also finds good cause to waive the 30-day delay in effectiveness of the actions under 5 U.S.C. 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. are inapplicable. Accordingly, no regulatory

flexibility analysis is required and none has been prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and
recordkeeping requirements, Virgin Islands.

Dated: August 22, 2012.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator for
Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is
amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read
as follows:

Authority: 16 U.S.C. 1801 et seq.

§ 622.32 [Amended]

2. In § 622.32, paragraph (b)(3)(vi) is suspended.

3. In § 622.35, paragraph (1) is added to read as follows:

§ 622.35 Atlantic EEZ seasonal and/or area closures.

* * * * *

(1) Closures of the commercial and recreational sectors for red snapper. The commercial and recreational sectors for red snapper are closed, except for a limited commercial season (7-day or less openings) and a limited recreational season (weekends consisting of Fridays, Saturdays, and Sundays only) determined by the RA. The Southeast Fisheries Science Center (SEFSC) will monitor commercial landings in-season to determine if the ACL has been harvested. If the SEFSC determined the ACL has not been harvested in the first 7-day opening, the RA may reopen the commercial sector for an additional limited time. If severe weather conditions exist, the RA may modify the opening and closing dates. The RA will determine when severe weather conditions exist, the duration of the severe weather conditions, and which geographic areas are deemed affected by severe weather conditions. If severe weather conditions exist or if NMFS determines a reopening of the commercial sector is possible, the RA will file a notification to that effect with the Office of the Federal Register, and announce via NOAA Weather Radio and Fishery Bulletin any change in the red snapper fishing seasons.

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§ 622.37 [Amended]

4. In § 622.37, paragraph (e)(1)(v) is suspended.

5. In § 622.39, paragraphs (d)(1)(iv), (d)(1)(viii) and (d)(1)(ix) are suspended, and paragraphs (d)(1)(xi) and (d)(1)(xii) are added to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(d) * * *

(1) * * *

(xi) Snappers, combined--10, of which no more than 1 may be red snapper. The 1-fish red snapper bag limit applies during the recreational red snapper season, specified in § 622.35(1). However, excluded from this 10-fish bag limit are cubera snapper, measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and vermilion snapper. (See § 622.32(c)(2) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

(xii) South Atlantic snapper-grouper, combined--20. However, excluded from this 20-fish bag limit are tomtate, blue runner, and those specified in paragraphs (d)(1)(i) through (vii) and paragraphs (d)(1)(x) and (xi) of this section.

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6. In § 622.44, paragraph (c)(9) is added to read as

follows:

§ 622.44 Commercial trip limits.

* * * * *

(c) * * *

(9) Red snapper. For the duration of the commercial red snapper season, specified in § 622.35(1), the commercial trip limit is 50 lb (22.7 kg), gutted weight.

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§ 622.45 [Amended]

7. In § 622.45, paragraph (d)(10) is suspended.

8. In § 622.49, paragraph (b)(25) is added to read as follows:

§ 622.49 Annual catch limits (ACLs) and accountability measures (AMs).

* * * * *

(b) * * *

(25) Red snapper--(i) Commercial sector. The commercial season for red snapper specified in § 622.35(1) and the commercial trip limit specified in § 622.44(c)(9) serve as the commercial AMs for red snapper. The Southeast Fisheries Science Center (SEFSC) will monitor commercial landings in-season to determine if the ACL has been harvested. If the SEFSC determines the ACL has not been harvested in the first 7-day

opening, the RA may reopen the commercial sector for an additional limited time. The commercial ACL for red snapper is 20,818 lb (9,443 kg), gutted weight.

(ii) Recreational sector. The recreational season specified in § 622.35(l) and the recreational bag limit specified in § 622.39(d)(1)(xi) serve as the recreational AMs for red snapper. The recreational ACL for red snapper is 9,399 fish.

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[FR Doc. 2012-21227 Filed 08/27/2012 at 8:45 am; Publication Date: 08/28/2012]